

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHICAGO TILE INSTITUTE)
WELFARE PLAN, and CHICAGO TILE)
INSTITUTE PENSION PLAN)
)
Plaintiffs,) 08 CV 2557
)) Judge Shadur
v.)
)
URBAN TILE AND CARPET CORP.)
)
Defendant.)

Motion For Judgment By Default

Plaintiffs, by its attorney Michael J. McGuire, move this court to enter Judgment by Default according to Rule 55 of the Federal Rules of Civil Procedure for Defendant's failure to appear, answer or otherwise plead. Further, in support of this Motion the Plaintiffs state:

1. Plaintiffs filed their complaint on May 6, 2008 and the Defendant was personally served with a copy of the Complaint and Summons on May 9, 2008. (**Group Exhibit A**)
2. The Defendant has failed to appear, answer or otherwise plead within the time allowed by the Federal Rules of Civil Procedure.
3. At all times relevant to this action, the Defendant has been bound by the provisions of a Collective Bargaining Agreement and the Trust Agreements, which created the Trust Funds.
4. Pursuant to the provisions of the Trust Agreements and Collective Bargaining Agreement, the Defendant is required to submit monthly reports to the Trust Funds which

list the number of hours worked by the Defendant's bargaining unit employees and to pay contributions based thereon.

5. The Defendant failed to submit contributions and reports to the Trust Funds for the months of February and March 2008. As a result, the Funds were forced to file suit to collect unpaid contributions. After the suit was filed and litigation commenced, the Defendant submitted the unpaid contributions to the Funds.

6. Pursuant to the CBA, Trust Agreements and/or 29 U.S.C. 1132, the Defendant is also liable for attorney's fees. As a result of this action the Defendant has accrued \$1,778.75 in attorney's fees and in costs. 29 U.S.C. Section 1132 (g)(2) provides for a mandatory award of attorney's fees in these types of cases. See also, Chicago District Council of Carpenters Pension Fund, et. al. v. The Industrial Erectors, Inc., 840 F. Supp. 1248 (U.S. Dist. Ct. N.D. Ill., 1993) which allows for the payment of attorney's fees as long as there is unpaid contributions at the time the Plaintiffs filed suit.

WHEREFORE, Plaintiffs move for Judgment by Default in the amount of \$1,778.75.

By: /s/:Michael J. McGuire
MICHAEL J. MCGUIRE

Michael J. McGuire
ARDC #: 6290180
Attorney for Plaintiffs
2 North LaSalle Street, Suite 1650
Chicago, IL 60602
312/263-2343

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

CHICAGO TILE INSTITUTE WELFARE
PLAN, et. al.

v.

URBAN TILE AND CARPET CORP.

Docket Number: 08CV 2557

Assigned Judge: JUDGE SHADUR
MAGISTRATE JUDGE MASON

Designated
Magistrate Judge:

TO: Urban Tile and Carpet Corp.
Mr. Richard W. Urban
Registered Agent
60 S. Will Road
Diamond, IL 60416

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
(name and address)

Michael J. McGuire
Gregorio & Associates
2 North LaSalle Street, Suite 1650
Chicago, Illinois 60602

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Michael W. Dobbins, Clerk

Date

Michael W. Dobbins, Clerk

Nadine Shirley
(By) DEPUTY CLERK

May 6, 2008

Date



5-8-08
069
Ae

GRUNDY CO S.O.

RECORD OF CIVIL PROCESS

DOCKET NUMBER: 08-0699

CASE NUMBER: 08CV2557

DIE DATE: 05/26/08

PERSONAL SERVICE ONLY: YES

SERVICE FEE: 72
PAID BY: CHECK CASH
BILLED DATE: _____

TYPE OF DOCUMENT: SUMMONS & COMPLAINT

PERSON TO SERVE: RICHARD, URBAN

RESIDENCE OR BUSINESS ADDRESS: 60 S. WILL RD.
DIAMOND, IL 60416

URBAN TILE * CARPET CORP.

RE: CHICAGO TILE INST.

COPY MAILED:

DATE:

DATES AND TIMES OF ATTEMPTED SERVICES:

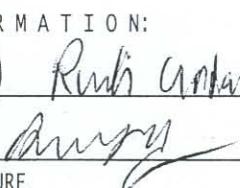
- 1) DATE: _____ TIME: _____ DEPUTY: _____ # _____
- 2) DATE: _____ TIME: _____ DEPUTY: _____ # _____
- 3) DATE: _____ TIME: _____ DEPUTY: _____ # _____
- 4) DATE: _____ TIME: _____ DEPUTY: _____ # _____
- 5) DATE: _____ TIME: _____ DEPUTY: _____ # _____

NOTIFICATION CARD LEFT: YES NO DATE: _____ TIME: _____

SERVICE INFORMATION:

PERSON SERVED: 1) Ruth Gant

DATE OF BIRTH: _____

SIGNATURE 

2) _____

DATE OF BIRTH: _____

SIGNATURE

3) _____

DATE OF BIRTH: _____

SIGNATURE

MALE FEMALE _____ RACE: WHITE BLACK _____ HISPANIC _____ OTHER _____ MILEAGE _____RELATIONSHIP TO DEFENDANT: SELF SPOUSE _____ MEMBER OF FAMILY _____ EXPLAIN: _____ADDRESS SERVED: SAMEDESCRIPTION OF BLDG OR HOUSE: _____ DATE SERVED: 5-9-2008TIME: 0842 DEPUTY SIGNATURE: Ronan Johnson # Q-94ATTY: Sten Process DATE RETURNED: ATTY 5-9-08 COURT FILE: _____CHECK RETURNED TO ATTY: YES NO AMOUNT: 72 CHECK NO: 9954

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**Attorney fee Affidavit in Support of
Motion for Judgment by Default**

NOW COMES MICHAEL J. MCGUIRE, who after being duly sworn upon oath, states as follows:

1. I am an associate of Gregorio & Associates and am licensed to practice law in the State of Illinois and for the Northern District of Illinois.
2. I have personal knowledge of the facts stated herein and if called to testify in this matter, I can competently testify to such facts from my own such knowledge.
3. The Collective Bargaining Agreement and the Trust Agreements under which this action is based provide for the payment of liquidated damages, audit fees and attorneys' fees and costs incurred for failure of a signatory contractor to pay contributions in accordance with those agreements.
4. I devoted six (6) hours in connection with the above-captioned case at the rate of \$160.00 per hour resulting in attorney's fees totaling \$960.00.
5. In addition, Mr. Frank Marco, the senior attorney in this matter devoted one and three quarters (1.75) of an hour in connection with the above-captioned case at the rate of \$205.00 per hour resulting in attorney's fees totaling \$358.75.
6. In addition, the filing fee was \$350.00 and the process server fee was \$110.00.

I certify that the foregoing costs and attorneys fees totaling \$1,778.75 were necessary and reasonable.



Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: 
MICHAEL J. MCGUIRE